

C-5749

EMPLOYMENT AGREEMENT FOR LAURENCE SCOTT POSTER

This EMPLOYMENT AGREEMENT ("Agreement") is made effective as of February 6, 2012 and is entered into by and between the CITY OF NEWPORT BEACH, a California municipal corporation and Charter city ("Employer" or "City") and LAURENCE SCOTT POSTER ("Employee"), an individual.

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. Pursuant to Sections 504(a) and 600 of the City Charter, and in accordance with Newport Beach Municipal Code ("NBMC") section 2.24.100, the City Manager has directed an open recruitment and screened all qualified applicants and other qualified persons known by the City Manager to be available for the position of Fire Chief.
- C. Following an open recruitment and an extensive competitive examination, interviewing, and screening process of numerous candidates, the City Manager believes Employee to be the best qualified on the basis of executive and administrative qualifications, with special reference to the experience and knowledge of accepted practice with respect to the duties of the Fire Chief as contemplated by and in conformity with NBMC section 2.24.100 and Civil Service Board Rules & Regulations ("CSBR&R") section 701.
- D. The City desires to employ Employee as its Fire Chief and to enter into an Agreement with Employee upon the terms and conditions in this Agreement.
- E. Employee is willing to accept such employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

SECTION 1: Term

Unless sooner terminated as provided in this Agreement, this Agreement shall be effective from February 6, 2012 ("Effective Date") and shall continue until Employer or Employee terminate this Agreement under the terms provided herein.

SECTION 2: Duties and Authority

Employer agrees to employ Employee as the Fire Chief to exercise the powers and authority and to perform the functions and duties of that position as specified in the City Charter and NBMC and all relevant resolutions, rules, regulations, procedures, and state codes, as they currently or may in the future exist, specifically including but not limited to those set forth in the "Fire Chief" description attached hereto as Exhibit A and incorporated herein by this reference. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as Employer, by the City Manager, may legally assign.

SECTION 3: Compensation

- A. On the Effective Date of this Agreement, Employer agrees to pay Employee an Annual Base Salary of \$204,984.00 (Two Hundred and Four Thousand, Nine Hundred Eighty Four Dollars and Zero Cents). In the event the Newport Beach Fire Management Association ("FMA") agrees to any contribution toward retirement greater than the three and one-half percent (3.5%) referenced below including, but not limited to, contributions made toward the CalPERS benefit pursuant to Government Code Section 20678, this Agreement shall be deemed amended and Employee will be subject to the same formula or percentage contribution as it applies to FMA employees and for the same duration. This deduction from Employee's Annual Base Salary is contemplated as an offset to a portion of the Employee's share paid by the City to the California Public Employee Retirement System ("PERS" or "CalPERS") for the "3% at 50" retirement plan. This pre-tax payroll deduction is made pursuant to IRS Code Section 414(h)(2). The deduction is currently at three and one-half percent (3.5%) of Employees Annual Base Salary. Three and one-half percent of Employee's Annual Base Salary amounts to \$7,174.44 per year, resulting in an Annual Base Salary of \$197,809.56 after the 3.5% pre-tax payroll deduction described herein ("Adjusted Pre-Tax Salary"). Adjusted Pre-Tax Salary shall also be subject to deduction and withholding of any and all sums required for federal or state income tax, social security tax and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on Employer's normal paydays for other management employees. Employer shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement. This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the manner (but not the amount) in which management employees are paid.
- B. Employer, by the City Manager, shall conduct an initial evaluation of Employee's performance promptly following the six (6) month anniversary of the Effective Date of this Agreement, with annual evaluations beginning at the one year anniversary of the Effective Date of this Agreement.

SECTION 4: Employee Benefits

- A. Flex Leave. Employee shall accumulate Flex Leave as provided in the City's Key and Management Compensation Plan, Executive Management category ("Compensation Plan"), at the current rate of 30 days per year or 9.23 hours per pay period. The amount of Employee's accrued Flex Leave may not exceed a total of four hundred (400) hours, and no Flex Leave shall further accrue beyond the maximum total of four hundred (400) hours. Upon Employee's first day of employment with the City, Employee will receive a bank of one hundred (100) Flex Leave hours. The right to sell back accumulated Flex Leave shall be consistent with the "Leave Sellback" provision of the Compensation Plan.
- B. Administrative Leave. Employee shall be entitled to a minimum of forty (40) hours and a maximum of eighty (80) hours of administrative leave per calendar year, as determined by the City Manager in his or her sole discretion. For calendar year 2012, Employee shall be allocated seventy-four (74) hours of administrative leave. Administrative leave will not accrue from calendar year to calendar year and must be used or lost at the conclusion of each calendar year. Consistent with the Compensation Plan, there is no right to sell back any accumulated Administrative Leave.
- C. Holidays. Employee shall be entitled to eleven (11) paid holidays and one (1) floating holiday, for a total of twelve (12) paid holidays, per calendar year, as identified more specifically in section A of the Leaves provision of the Compensation Plan.
- D. Additional Benefits. Employee shall receive the same health insurance and retirement benefits, and be entitled to participate in plans and programs such as short term and long term disability plans, life insurance plans, and deferred compensation plans, as are available to Executive Management employees of the City, as provided in the Compensation Plan. Specifically:
 - 1. City has implemented an IRS qualified Cafeteria Plan for certain benefits as provided in section A of the "Benefits" portion of the Compensation Plan. City's contribution towards the Cafeteria Plan for Employee shall be One Thousand, Two Hundred Forty-Nine Dollars (\$1,249.00) per month. Any unused Cafeteria Plan funds shall be payable to Employee as taxable cash back. If Employee does not want to enroll in any health insurance plan offer by the City, Employee shall provide evidence of group medical insurance coverage that is acceptable to the City and execute an opt-out agreement releasing the City from any responsibility or liability to provide health insurance coverage on an annual basis. In addition, if Employee elects to participate in a City-sponsored medical plan, Employee shall be entitled to the minimum CalPERS participating employer contribution toward medical insurance, currently set at One Hundred and Twelve

Dollars (\$112.00) per month for the 2012 calendar year, subject to annual adjustment on January 1 of each succeeding year in accordance with the Compensation Plan. The City's contributions set forth in this paragraph shall adjust automatically to correspond to the City's contributions to Executive Management as set forth in the Compensation Plan.

2. Employee shall be eligible for the "3% @ 50" retirement formula noted in section C(1) of the "Benefits" portion of the Compensation Plan.
3. Employee shall be eligible to participate in the LIUNA Supplemental Pension program noted in section C(2) of the "Benefits" portion of the Compensation Plan.
4. Employee shall be eligible to participate in the Medical Expense Reimbursement Plan (MERP) noted in section D of the "Benefits" portion of the Compensation Plan as a Category 1 employee hired after January 1, 2006.
5. City shall provide term life insurance for Employee in the face value of Fifty Thousand Dollars (\$50,000.00).

This Agreement shall be deemed amended as to these benefits, and these benefits only, whenever the City Council adopts a resolution or takes action changing these benefits under the Compensation Plan.

- E. Annual Physical Exam. Employee shall undergo an annual physical examination by a Board-certified medical doctor and City shall reimburse Employee for the actual cost of the examination up to a maximum of One Thousand Dollars (\$1,000.00).
- F. Uniform Allowance. Employer will pay the entire costs of providing each component of the uniform and will report the value of the same as One Thousand, Seven Hundred Nineteen Dollars (\$1,719.00) to PERS as additional compensation paid to Employee.
- G. City to Provide Automobile. Employee's duties require him to be available to respond to the demands of City business at all times and outside of regular business hours, including weekends. Therefore, City shall provide Employee with a vehicle that may be used for City-related business purposes. City shall periodically assess the condition of the assigned vehicle and, if warranted, City will replace the assigned vehicle. City shall pay for reasonable maintenance of the vehicle and gasoline. It is contemplated by the parties that Employee will use the vehicle principally for City-related business, however, to the extent that Employee uses the vehicle for any incidental personal business, Employee shall pay for gasoline for all such personal use.

- H. City Cell Phone Stipend. Employee shall be eligible to receive a cell phone stipend pursuant to City's Administrative Procedure AP-004 – Cell Phone Stipend Program Policy.
- I. Key and Management Group, Executive Management Category. Employee shall be a member of the City's Key and Management Group, Executive Management category. As such, the benefits, terms and conditions of the Compensation Plan shall apply to Employee as provided more specifically above, provided however, in the event of a conflict between the provisions of this Agreement and the Compensation Plan, this Agreement shall prevail.

SECTION 5: General Business Expenses

- A. Employer recognizes that Employee may incur expenses of a non-personal, job related nature that are reasonably necessary to Employee's service to Employer. Employer agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to Employer's normal expense reimbursement procedures or such other procedure as may be designated by the City Manager. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.
- B. Employer agrees to budget and to reimburse or pay for reasonable costs for attendance and participation in meetings, institutes, training programs, conferences, conventions and similar gatherings that support leadership development and the advancement of Employer and Employee's mutually agreed upon goals, and which are related to Employee's duties or Employer's operations and held in the continental United States. For purposes of this paragraph, reasonable expenses are limited to the reasonable and actual cost of registration, airfare (where applicable), ground transportation and meals. Reasonable expenses will also include the reasonable and actual cost of lodging for meetings outside of Orange County.
- C. The expenses to be budgeted and paid in this Section 5, Paragraphs A and B above, are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Manager. Employer will separately budget and pay for membership and participation in community, civic or other organizations or events in which Employer requires Employee to participate.

SECTION 6: At-Will Employment Relationship

- A. Consistent with Section 504 of the City Charter and NBMC Chapter 2.12, Employee is appointed by, and serves at the pleasure of, the City Manager. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right

of Employer to terminate this Agreement and the employment of Employee at any time, with or without cause. Employer shall pay Employee for all services through the Effective Date of termination and Employee shall have no right to any additional compensation or payment, except as provided in Section 7, below. In addition to the basis listed in Section 7, Paragraph B below, cause shall also include a failure to implement the goals or policies, or both, of the City, as determined by the City Council or City Manager, or for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration. Nothing herein shall be construed to limit the rights and obligations of City and Employee provided in the Firefighters Procedural Bill of Rights Act, codified at Government Code section 3250, et seq. ("FPBRA").

- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from his employment with Employer.

SECTION 7: Severance and Benefit Payoff at Termination

- A. If Employer terminates this Agreement (thereby terminating Employee's Employment) for any reason other than one or more of those reasons listed in Section 7, Paragraph B below, as determined by the City Manager, Employer shall provide Employee with fourteen (14) calendar days written notice and shall pay Employee a lump sum severance benefit equal to six (6) months of his then applicable Annual Base Salary, and provide six (6) months of medical benefits as provided under the Compensation Plan beginning on the Effective Date of termination.
- B. If Employer terminates this Agreement (thereby terminating Employee's Employment) for any reason or reasons listed below, as determined by the City Manager, Employee shall not be entitled to any severance.
 - 1. Conviction of a felony;
 - 2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
 - 3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code section 53243.4;
 - 4. Willful abandonment of duties;
 - 5. A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted direction of the City Manager or the policy decisions of the City Council made by the City Council as a body; and

6. Any other intentional or grossly negligent action or inaction by Employee that materially and substantially: (a) impedes or disrupts the operations of Employer or its organizational units; (b) is detrimental to Employee or public safety; (c) violates properly established rules or procedures of Employer causing a material and substantial adverse impact on Employer; or (d) has a material and substantial adverse effect on Employer's interests as clearly defined and delineated by properly established City Council action taken by the Council as a body, policy, regulations, ordinances, or Charter provisions of Employer.
- C. Any dispute as to whether severance is excused under Section 7, Paragraph B above, shall be resolved consistent with then current City policies, rules and procedures and with Employer's and Employee's rights and obligations under FPBRA.
- D. If Employee terminates this Agreement (thereby terminating Employee's Employment), Employee shall not be entitled to any severance.
- E. Upon termination (regardless of reason), Employee shall be compensated for all accrued but unused Flex Leave. No compensation shall be paid for any accrued but unused administrative leave.

SECTION 8: Employee's Obligations and Hours of Work

Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement and utilize his best efforts to promote Employer's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours (including attendance at City Council meetings). Employee's base salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of Employer and the exempt, salaried nature of the employment, employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at the Newport Beach Fire Department, Monday through Friday during normal business hours.

SECTION 9: Confidentiality

- A. Employee acknowledges that in the course of his employment contemplated herein, Employee will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise

accessible to Employee that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Employee shall hold the Confidential Information in trust for City's benefit, and shall not disclose the Confidential Information to others without the express written consent of City. All Confidential Information shall be promptly returned to the City immediately upon the effective date of any severance of employment.

- B. The obligations of Employer and Employee under this Section 9 shall survive the termination of this Agreement.

SECTION 10: Outside Activities

Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with his duties and responsibilities to Employer.

SECTION 11: Indemnification

Consistent with the California Government Code, Employer shall defend and indemnify Employee, using legal counsel of Employer's choosing, against expense or legal liability for acts or omissions by Employee occurring within the course and scope of Employee's employment under this Agreement. In the event there is a conflict of interest between Employer and Employee in such a case so that independent counsel is required for Employee, Employer may select the independent counsel after having considered the input of Employee and shall pay the reasonable fees of such independent counsel consistent with City litigation guidelines and standard rates received by City from its chosen special counsel.

Notwithstanding the foregoing, and consistent with Assembly Bill 1344, adding Article 2.6 (commencing with Section 53243), of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, Employee shall be required, if convicted of a crime involving an abuse of his office or position, to fully reimburse the City for: (1) any paid leave salary offered by the City to the Employee; (2) any funds provided for the legal criminal defense of the Employee; (3) any cash settlement related to the termination that Employee may receive; and (4) any other payments received by Employee from City that in any way relate to the foregoing.

SECTION 12: Other Terms and Conditions of Employment

Employer may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

SECTION 13: Notices

Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER:
City of Newport Beach
c/o City Clerk
3300 Newport Blvd.
PO Box 1768
Newport Beach, California 92658-8915

With a courtesy copy to:
City Attorney
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, California 92658-8915

- (2) EMPLOYEE: Laurence Scott Poster
at the home address then shown in Employer's files

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service as provided by law.

SECTION 14: General Provisions

- A. Integration: This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to Employer's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace, as they currently or may in the future exist, and his employment is, and will continue to be, at the will of the City Manager.
- B. Binding Effect: This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

- C. Choice of Law: This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Charter provisions, Codes, Ordinances, Policies and Resolutions.
- D. Severability: If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- E. Employee's Independent Review: Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement. Employee acknowledges that he has been advised to obtain, and has availed himself of, legal advice with respect to the terms and provisions of this agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates reflected below each signature.

EMPLOYER

CITY OF NEWPORT BEACH,
A California Municipal Corporation

By: _____

David Kiff, City Manager

Date: _____

1-19-2012

EMPLOYEE

By: _____

Laurence Scott Poster

Date: _____

1/24/12

APPROVED AS TO FORM

City Attorney's Office

By: _____

Aaron C. Harp,
City Attorney

Date: _____

1-19-12

ATTEST:

By: _____

Leilani I. Brown,

DEPUTY
CITY
CLERK



City Clerk

ATTACHMENTS: Exhibit A: Fire Chief Description
A10-01356 – Scott Poster Employment Agreement

EXHIBIT A

FIRE CHIEF

DEFINITION: To serve as the executive director of the Fire Department; to plan, organize, direct and coordinate the fire suppression and prevention, emergency medical services, ocean safety, hazardous waste mitigation, and disaster preparedness programs and activities of the department; to serve as a member of the City Manager's executive management team; and to provide highly responsible and professional staff assistance to the City Manager and City Council.

SUPERVISION RECEIVED AND EXERCISED: Receives general administrative direction from the City Manager. Exercises direct supervision over management, supervisory, professional, technical and clerical personnel.

EXAMPLES OF ESSENTIAL DUTIES: Duties may include, but are not limited to, the following:

Essential Job Duties

- Plan, direct, and review the operation, services and activities of the Fire Department, including fire suppression, hazardous material mitigation, fire and life safety code compliance, emergency medical services, ocean lifeguards, citywide disaster preparedness and response; administer the overall operation of the department, including hiring, personnel administration, budgeting, and community relations; assess community service expectations and requirements and develop appropriate methods to meet service requirements; ensure the maximum utilization of manpower, equipment, and supplies;
- Develop, plan and implement departmental goals and objectives; develop, recommend and administer approved policies and procedures; coordinate departmental activities with those of other City departments and outside agencies and organizations; provide professional and technical advice and assistance to the City Manager and City Council on matters related to departmental functions; Prepare and present staff reports and answer questions;
- Plan, organize, select and supervise the work of departmental staff; coach, motivate, monitor, correct and evaluate staff performance; serve as the second level supervisor of staff supervised by division managers and review performance evaluations prepared by subordinate managers; develop and implement staff training programs and plans; recommend employee recognition, discipline and termination; ensure that City personnel policy and employee agreements are implemented and applied consistently within the department;
- Supervise and participate in the development of the departmental budget; participate in the forecast of revenue, expenses and additional funds needed for staffing, equipment, materials, and supplies; administer the approved departmental budget and guide subordinate managers in developing and administering division and unit budgets;
- Represent the City and participate in professional and public meetings and organizations, as appropriate; attend staff meetings; participate in mandated training and staff development; respond to and meet with property owners, homeowner groups, business

districts, and the public; meet with, provide information and negotiate with various regulatory agencies to satisfy their requirements; represent the City as a witness in legal actions;

- Oversee and direct departmental office operations; maintain appropriate records and files; coordinate workflow; prepare reports, agenda items memoranda, letters and other forms of correspondence; and
- Perform related duties as assigned.

QUALIFICATIONS:

Knowledge of:

Advanced principles and practices of fire suppression and prevention, emergency medical services, disaster preparedness, training, and ocean lifeguard programs and services;

Principles and practices of organization, administration and personnel management and leadership, particularly as applied to the analysis and evaluation of programs, policies and operational needs;

Principles and techniques of budget development and administration;

Applicable Federal, State and local laws, ordinances, codes and regulations;

Principles of supervision, training and performance evaluation;

Current technological and communication equipment and software applicable to the delivery of departmental services to internal and external customers;

Modern office practices, procedures, methods and equipment; and

The use of a PC and applicable software.

Ability to:

Direct, plan and organize the activities of a comprehensive citywide Fire Department, including fire suppression and prevention, emergency medical services, disaster preparedness, personnel training, and ocean lifeguard programs and services;

Analyze problems; identify alternative solutions, project consequences of proposed actions and implement recommendations in support of goals;

Interpret and apply City policies, procedures, rules and regulations;

Develop and administer sound departmental policies and procedures;

Stay abreast of new trends, innovations, standards and guidelines in the fields of fire suppression and prevention, emergency medical services, disaster preparedness, hazardous material mitigation and ocean lifeguard services and safety;

Provide leadership to a diverse work force; meeting City objectives while maintaining positive employee morale;

Gain cooperation through discussion and persuasion;

Select, supervise, train and evaluate personnel;

Prepare and administer a departmental budget;

Maintain confidentiality of medical and other privileged information;

Communicate clearly and concisely, both orally and in writing;

Appear for work on time;

Follow directions from a supervisor;

Understand and follow posted work rules and procedures;

Accept constructive criticism; and

Establish and maintain cooperative working relationship with those contacted in the course of work.

This position may be required to work overtime hours as needed.

EXPERIENCE AND TRAINING: Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Ten years of increasingly responsible fire suppression and prevention experience, including at least five years of responsible management and supervisory experience.

Training: Completion of coursework leading to a bachelor's degree in fire administration or a closely related field. A master's degree in public administration, fire administration or a related field is desirable.

LICENSE OR CERTIFICATE:

Possession of, or ability to obtain, a valid and appropriate California driver's license is required.